

Message Text

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ORIGIN OPIC-06

INFO OCT-01 AF-10 ISO-00 EB-08 /025 R

DRAFTED BY OPIC/GC:AMARRA
APPROVED BY AF/W:TWMSMITH
EB/IFD/OIA:DGRANT
AF/EPS:LWHITE (INFO)

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O 052128Z JUN 78
FM SECSTATE WASHDC
TO AMEMBASSY COTONOU IMMEDIATE

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FROM OPIC

E.O. 11652: N/A

TAGS: EINV

SUBJECT: MORRISON-KNUDSEN

1. MORRISON-KNUDSEN HAS INFORMED OPIC THAT IT HAS NOT RESOLVED ITS CLAIM AGAINST GPRB FOR USD 7,500,000 IN OVER-RUNS INCURRED IN CONNECTION WITH THE PARAKOU-MALANVILLE ROAD PROJECT. UNDER THE TERMS OF ITS CONSTRUCTION CONTRACT WITH GPRB, MORRISON-KNUDSEN HAS A RIGHT TO INVOKE AN ARBITRAL PROCEEDING BEFORE THE INTERNATIONAL CHAMBER OF COMMERCE IN PARIS. MORRISON-KNUDSEN HAS REQUESTED SUCH ARBITRATION AND NOTIFICATION OF SAME HAS BEEN SENT TO GPRB. UNDER THE RULES OF THE INTERNATIONAL CHAMBER OF COMMERCE, EACH OF THE TWO PARTIES IN DISPUTE HAS A RIGHT TO CHOOSE ONE ARBITRATOR. THESE TWO ARBITRATORS THEN CHOOSE A THIRD ARBITRATOR WHICH TOGETHER CONSTITUTE THE ARBITRAL PANEL. AS YET GPRB HAS NOT CHOSEN ITS ARBITRATOR

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IF IT DOES NOT DO SO, THE INTERNATIONAL CHAMBER OF COMMERCE CAN APPOINT AN ARBITRATOR FOR GPRB.

2. IT IS OBVIOUSLY IN THE INTEREST OF GPRB TO APPOINT ITS OWN ARBITRATOR RATHER THAN HAVING ONE APPOINTED FOR IT. HOWEVER UNLESS GPRB ACTS WITH DISPATCH IT MAY LOSE THE OPPORTUNITY TO HAVE AN ARBITRATOR SYMPATHETIC TO ITS

POSITION ON THE PANEL. FYI EACH PARTY APPOINTING AN

ARBITRATOR MUST DEPOSIT 65,000 WITH THE INTERNATIONAL
ARBITRATOR MUST DEPOSIT USD 65,000 WITH THE INTERNATIONAL
CHAMBER OF COMMERCE TO COVER THE COST OF THE ARBITRAL
PROCEEDING. HOWEVER IF GPRB DOES NOT PARTICIPATE IN THE
SELECTION OF THE PANEL, MORRISON-KNUDSEN WILL PUT UP ITS
OWN SHARE AND THAT OF GPRB TO ASSURE ITSELF OF AN
ARBITRATION.

3. ONCE THE ARBITRAL PANEL IS CONSTITUTED, IT WILL HEAR
EVIDENCE PRESENTED BY MORRISON-KNUDSEN; GPRB WILL HAVE AN
OPPORTUNITY TO RESPOND AND DEFEND ITSELF. IT NORMALLY
TAKES ABOUT 20 MONTHS TO RENDER A DECISION IN A CONTESTED
CLAIM. IF GPRB DOES NOT CONTEST THE MORRISON-KNUDSEN
CLAIM BEFORE THE ARBITRAL PANEL, A DECISION COULD BE
EXPECTED IN A SHORTER PERIOD OF TIME. ALTHOUGH IN AN
UNCONTESTED PROCEEDING MORRISON-KNUDSEN IS NOT NECESSARILY
ASSURED AN AWARD, ITS CHANCES OF RECEIVING ONE WOULD BE
SUBSTANTIAL.

4. UNDER MORRISON-KNUDSEN'S INSURANCE POLICY WITH OPIC,
A CLAIM CAN BE MADE AGAINST OPIC IF THE ARBITRAL PANEL
RENDERS AN AWARD IN FAVOR OF MORRISON-KNUDSEN (WHETHER
CONTESTED BY GPRB OR NOT) AND GPRB FAILS TO PAY SUCH AWARD
FOR AT LEAST SIX MONTHS. THE INSURANCE CONTRACT PROVIDES
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THAT IF OPIC PAYS COMPENSATION TO MORRISON-KNUDSEN OPIC
WOULD SUCCEED TO THE CLAIMS AND OTHER RIGHTS WHICH
MORRISON-KNUDSEN HAS AGAINST GPRB.

5. AT THIS TIME, OPIC REQUESTS EMBASSY TO ASCERTAIN IF
GPRB INTENDS TO APPOINT AN ARBITRATOR AND/OR TO PARTICIPATE
IN THE ARBITRATION. EMBASSY MAY WISH TO POINT OUT TO GPRB
THE ADVANTAGES OF HAVING A GPRB APPOINTEE SERVE ON THE
ARBITRAL PANEL AND PRESENTING ITS CASE BEFORE THE ARBITRAL
PANEL ESPECIALLY AS GPRB HAS CONTENTED ALL ALONG IN DIS-
CUSSIONS WITH MORRISON-KNUDSEN THAT THE OVERRUN CLAIM IS
WITHOUT MERIT. HOWEVER UNLESS GPRB PARTICIPATES IN THE
ARBITRATION, ITS DEFENSE TO THE CLAIM WILL NOT BE AIDED
AND THE PROBABILITY OF AN ARBITRAL DECISION ADVERSE TO ITS
INTERESTS WILL BE GREATLY INCREASED. FURTHERMORE IF IT
FAILS TO PAY AN ARBITRATION AWARD RENDERED IN FAVOR OF
MORRISON-KNUDSEN WITHIN A SIX MONTH PERIOD, MORRISON-
KNUDSEN WILL BE IN A POSITION TO MAKE A CLAIM AGAINST OPIC
UNDER THE OPIC INSURANCE POLICY. IF OPIC THEN DETERMINED
IT WAS LIABLE UNDER THE POLICY AND PAID THE CLAIM, OPIC
WOULD HAVE TO DEAL DIRECTLY WITH GPRB WITH RESPECT TO THE
PAYMENT OF THE ARBITRATION AWARD. BEFORE SUCH A CHAIN OF

EVENTS IS SET IN MOTION, EMBASSY SHOULD EMPHASIZE TO GPRB
THE IMPORTANCE OF APPEARING AND DEFENDING ITSELF IN THE

ARBITRAL PROCEEDING WITH MORRISON-KNUDSEN. IF GPRB HAS A
LEGITIMATE DEFENSE TO THE MORRISON-KNUDSEN CLAIM, THE
PROPER FORUM TO HEAR AND EVALUATE THE DEFENSE IS THE ARBI-
TRAL PROCEEDING BEFORE THE INTERNATIONAL CHAMBER OF
COMMERCE. DECONTROL 6/5/80. VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ARBITRATION, TRADE COMPLAINTS
Control Number: n/a
Copy: SINGLE
Draft Date: 05 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE141818
Document Source: CORE
Document Unique ID: 00
Drafter: AMARRA
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780235-0058
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780695/aaaaddpl.tel
Line Count: 124
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 1f753d92-c288-dd11-92da-001cc4696bcc
Office: ORIGIN OPIC
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 19 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2486012
Secure: OPEN
Status: NATIVE
Subject: MORRISON-KNUDSEN
TAGS: EINV, BDIS, DM, MORRISON-KNUDSEN
To: COTONOU
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/1f753d92-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014